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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.            | CONFIRMATION NO. |
|---|-------------|----------------------|--------------------------------|------------------|
| 10/086,484  | 03/01/2002  | Huakun Xu            | 10118.00011                    | 2128             |
| 22908   | 7590        | 02/03/2004           |                                |                  |
| BANNER & WITCOFF, LTD.<br>TEN SOUTH WACKER DRIVE<br>SUITE 3000<br>CHICAGO, IL 60606 |             |                      | EXAMINER<br>MARCANTONI, PAUL D |                  |
|   |             |                      | ART UNIT<br>1755               | PAPER NUMBER     |

DATE MAILED: 02/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |  |
|------------------------------|-----------------|--|
| <b>Office Action Summary</b> | Application No. | Applicant(s)   |
|                              | 10/086,484      | XU ET AL.  |
| Examiner                     | Art Unit        |  |
| Paul Marcantoni              | 1755            |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 03 December 2003 and 09 January 2004.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-39 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-39 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.      6) Other: \_\_\_\_\_

Applicants' arguments filed 12/3/03 and 1/9/04 are moot in view of the new grounds of rejection.

Claims 1-39 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention.

The terms "capable of" is indefinite and its removal from all claims (claims 1 and 39) is advised. Insertion of the terms ---that forms--- in place of "capable of forming" is suggested.

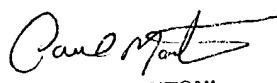
Claim 8 is vague and indefinite. What do applicants mean by distinct geometric configurations and what exactly are these configurations? (ie what shape or form are applicants referring to exactly). Further, do these geometric configurations refer to the macropores themselves having distinct shapes and sizes (configurations) or does it refer to the shape or size of the material being formed? Please specify exactly what is meant by these terms.

Claim 11 fails to further limit claim 1 since there is already an in vivo limitation in claim 1.

Claims 1-39 are rejected under 35 USC 112 first paragraph and 35 USC 132 as the specification as originally filed does not provide support for the invention as is now claimed.

The terms "characterized by increasing the flexural strength of said mixture in vivo by at least 50%" constitutes new matter. (claims 1 and 39)

Inquiries regarding this communication can be directed to Paul Marcantoni at 571-272-1373.

  
PAUL MARCANTONI  
PRIMARY EXAMINER  
GROUP 1700